Social Policy-Seeking and the Supreme Court: The Effects of "Social" Case Facts on the Search and Seizure Jurisprudence of the United States Supreme Court

Honors Research Thesis

Presented in partial fulfillment of the requirements for graduation with honors research distinction in Political Science in the undergraduate colleges of The Ohio State University

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The Ohio State University April 2013

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Abstract

The justices of the United States Supreme Court are perhaps the most powerful individual policymakers in the nation; it has therefore been imperative for political scientists to discover the decision-making process of the justices. Three models, the legal, attitudinal, and strategic models, have gained prominence among Court researchers. The attitudinal model enjoys the most robust empirical support, especially for constitutional civil-rights cases. One area of constitutional jurisprudence, the Court's search and seizure rulings, has been extensively examined through the attitudinal model; the research to date, however, focuses on "legal" case facts as determinants, neglecting the possibility that "social" case facts, which have no bearing on the legal status of the search and seizure, might influence the decisions of the justices. My hypothesis is that these "social" facts do indeed affect the justices' decisions in substantial and significant ways. In particular, I will focus on the effect of Drugs *as items seized in a search and crimes related to drugs, which I hypothesize will have particularly substantial and significant impact on the justices' findings as to the reasonableness of the search. As to the first part of my hypothesis, "social" case facts do not appear to exercise substantial or significant effects on the justices' decisions.* Drugs *as items seized and the drug* Trafficking *crimes are notable exceptions to the general lack of significant impact from "social" case facts, consistent with the second part of my hypothesis.*[1]

Introduction

Few items of political science examination have generated as much interest and intense study as have the decisions of the United States Supreme Court. Few individuals are able to exercise as immense an influence over the public policy of the nation as are the Justices of the Supreme Court; further, their decisions bear most directly on the interpretation of the United States' founding document. Thus, veritable barrels of ink have been spilled in the attempt to accurately predict the decisions of the justices through scientific models. Three such models have gained

[1] I would like to thank Professor Lawrence Baum for his invaluable support and assistance in constructing this thesis, especially as regards the statistical analyses. I would also like to thank Professor Jeffrey Segal for his tremendous generosity in providing me his dataset. I am additionally grateful to Professors Zachary Peskowitz and Piers Turner for participating in the defense of this thesis.

prominence: the legal model, the attitudinal model, and the strategic model.[2] Of these three, the attitudinal model, which holds that "the Supreme Court decides disputes in light of the facts of the case vis-á-vis the ideological attitudes and values of the justices,"[3] has gained the most currency among political scientists.[4] The attitudinal model has gained significant prevalence in the study of the Court's decision-making as regards Fourth Amendment cases. The Fourth Amendment of the United States Constitution dictates:

> The Right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.[5]

Thus, when confronted with Fourth Amendment cases and controversies, the justices are called upon to decide on the "reasonableness" of the search in question. Much of the research to date from the attitudinal model as regards the reasonableness of a search has focused on the impact of what are called "legal facts," i.e. those case facts that bear on the legal status of a search, including the existence of a warrant, the location of the search, findings of probable cause, exceptions to the warrant requirement, whether the search and seizure was conducted in connection with an arrest, and the decision of the lower court[6]; however, it is not unreasonable to suppose that "legal facts" are not the only facts about which justices hold "ideological attitudes and values" that might bear on their findings regarding the reasonableness of a search. The justices might hold

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[2] The models are not, for the most part, singular unified models, but rather a collection of separate models that operate on differing fundamental assumptions; this is especially true of the "strategic model," which is in fact a collection of models that take into account various eternal influences on the Court. These models will be further explicated in the **Decision Making by the Supreme Court** section.

[3] Segal & Spaeth (2002), page 86.

[4] Epstein & Knight (1998); Pacelle, Curry, & Marshall (2011); Epstein, Landes, & Posner (2013).

[5] U.S. Constitution Amendment IV.

[6] Segal (1984, 1985, 1986); Segal & Spaeth (2002); Kritzer & Richards (2005).

certain attitudes in regards to what I call "social facts," i.e. those case facts that do not bear directly on the reasonableness of a search, but nevertheless may influence the justices' decisions. These facts, the effects of which have to this point not been ascertained empirically, include the type of items seized in a search and the nature of the charge brought against the subject of the search.

My hypothesis is that these "social facts" do indeed have a substantive effect on the decision-making of the justices in Fourth Amendment cases. If the hypothesis bears out, it would seriously damage the normative notion that "it is law – and not the personal politics of individual judges – that controls judicial decision making,"[7] even more than the empirical success of the attitudinal model already has. While the justices might make attitudinally-motivated decisions regarding legal facts, at least the relevant attitudes have a legal vector; if it is shown that the justices' social attitudes affect their decision-making, the notion that the justices are beholden to the law would be substantially undermined. Such results would be disturbing for both conservatives, who are already unsettled by the implications of the attitudinal model, and for civil libertarians, who would be concerned with conservative attitudes about the social efficacy of preventing certain crimes or of the seizure of certain items having an effect on the judgment of the reasonableness of a search.

In the era of the "War on Drugs," it is conceivable that attitudes regarding enforcement of drug laws might have particular significance in the decision-making of Supreme Court justices. I therefore posit a second hypothesis, that variables related to drugs will have a particularly significant impact on the justices' findings as to the reasonableness of searches. If no such connection were probable, then Thurgood Marshall would have no need to remind the Court that "[t]here is

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[7] Harry T. Edwards, "Public Misperceptions Concerning the 'Politics' of Judging: Dispelling Some Myths About the D.C. Circuit," *56 University of Colorado Law Review* 619 (1985) at 620, as cited in Segal & Spaeth (2002), page 49.

no drug exception to the Constitution, any more than there is a communism exception or an exception for other real or imagined sources of domestic unrest."[8] If the justices weigh "social" facts heavily in their decisions, they will appear to be legislating their own social preferences from the bench rather than upholding or even reinterpreting law. This would be extremely unwelcoming for civil libertarians, who would be concerned that the rights of individuals with behaviors contrary to the justices' social attitudes will face harsher challenges to their rights without strong legal basis.

I will examine my hypotheses in five parts. First, I will provide a background on Supreme Court decision-making scholarship, explicating the legal, attitudinal, and strategic models, and I will explain why the attitudinal model is the most appropriate for my purposes. Second, I will lay out a brief history of modern Fourth Amendment jurisprudence and present a review of attitudinal search and seizure scholarship. Third, I will specify my variables and the methods for analysis. Fourth will come the results of the analyses, followed by discussion of the implications thereof. Finally, I will conclude with a reflection on the findings and how my research fits into the broader scheme of search and seizure research.

Decision-Making by the Supreme Court

The decisions of the Supreme Court clearly have enormous policy implications; yet judges generally tend to be quite private people, and their decision-making process is not entirely obvious: it has therefore been necessary to make scientific inquiries in order to ascertain that process.[9] Three models of judicial decision-making procedure have gained prominence: the legal model, the attitudinal model, and the strategic model. The legal model is the most familiar to the

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[8] *Skinner v. Railway Labor Executives Assn.* 489 U.S. 602 (1988), Marshall, J. Dissenting, page 641.

[9] Epstein, Landes, & Posner (2013)

broader public, and it is the legal model that is most often accepted by judges themselves.[10] The model generally holds that "the decisions of the court are substantially influenced by the facts of the case in light of the plain meaning of statutes and the Constitution, the intent of the framers, and/or precedent"[11]; different jurists may ascribe different weight to each of these concerns. Legal models go by such familiar names as "Originalism," "Legislative Intent," and *Stare Decisis* (the doctrine of strict adherence to precedent). These models have a great deal of normative purchase: after all, judges write their opinions with a heavy reliance on precedent, often cite legislative or original intent, and frequently look to the founders to lend an authoritative voice to their writing; however, legal models enjoy almost no empirical support:[12] the justices do not necessarily stick to interpretations consistent with the legal models they would ostensibly favor.[13] The terms "legislative intent" and " intent of the founders" are ambiguous at best, given the incomplete records of the Constitutional Convention and disagreement among the founders, and legislative intent may be too muddled to retrieve accurately from legislative records.[14] Although justices express their opinions in terms of precedent, they "often 'distinguish' a precedent, holding that it does not govern the current case. They may also narrow a case or overturn it altogether,"[15] although they rarely take the latter most course. I find all of this quite unfortunate, as I believe the legal model has quite a bit of normative force and informs the way we think about the exercise and benefits of the rule of law; however, I am writing as a social scientist, not as a legal phi-

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10 Segal & Spaeth (2002). A notable exception to this general tendency among jurists is Richard Posner, a judge on the US 7th Circuit Court of Appeals, who has endorsed a strategic model in a recent book coauthored with Lee Epstein and William Landes.

11 *Ibid* page 48.

12 Segal & Spaeth (2002); Pacelle, Curry & Marshall (2011); Epstein, Landes, & Posner (2013).

13 A notable example is the split of decisions in *Bush v. Gore* 531 U.S. 98 (2000), where the conservatives took a characteristically liberal position, and the liberals endorsed a characteristically conservative interpretation of the Constitution. (Segal & Spaeth 2002, page 1). The *Bush* decision saw justices split against their ostensible "legalist" preferences and endorse positions in line with their perceived party preferences, suggesting attitudinal influence.

14 Segal & Spaeth (2002).

15 Baum (2010) page 120.

losopher, and it is eminently clear that the justices do not in fact adhere to legal models of decision-making.

A more realistic and empirically valid, if more normatively disturbing, Supreme Court decision-making model is the attitudinal model. This model operates on the premise that ideological attitudes are the most salient factors for the justices in their decision-making process. It traces its heritage back to the early "legal realists" such as Jerome Frank, Karl Llewellyn, and even Supreme Court Justice Oliver Wendell Holmes, Jr.[16] The novelty of the legal realists' approach was that it recognized "that American judges exercise, at least occasionally (and at the Supreme Court level much more than occasionally), a legislative or policymaking role,"[17] and that "[d]ecisions influenced by a political ideology are political, and many judicial decisions are so influenced."[18] Although they were on the cutting edge of social science in the early 20th Century, legal realists could not have known about the validity of their approach without empirical confirmation. Modern political science has provided such confirmation, and a plethora of studies have demonstrated the empirical strength of the attitudinal model,[19] especially as regards Constitutional civil rights cases before the Supreme Court.[20] That is not to say that the attitudinal model is without critics: several political scientists have charged that the model is overly simplistic in leaving out legal factors that may be salient in decision-making[21]; and that it does not seek to explain strategic interactions between the justices themselves or between the justices and other

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16 Segal & Spaeth (2002); Epstein, Landes, & Posner (2013).
17 Epstein, Landes, & Posner (2013) page 26.
18 *Ibid* at page 27.
19 Segal (1984, 1985, 1986); Hagle & Spaeth (1993); Segal, Epstein, Cameron, & Spaeth (1995); Segal & Spaeth (2002).
20 Pacelle, Curry, & Marshall (2011); Epstein, Landes, & Posner (2013).
21 Kritzer & Richards (2005); Pacelle, Curry, & Marshall (2011)

branches of government, nor explain non-voting decisions the justices make,[22] such as whether or not to grant certiorari and opinion assignment.

Critics of the attitudinal model who seek an empirically valid method of predicting Supreme Court decisions have posited their own models, which are broadly called "strategic" or "rational choice" models. These models assert that the justices operate in a framework of incentives, constraints, and interactions that necessitate "strategic" behavior: the justices, who are indeed seeking their preferred outcome and operate within a framework that may not allow them to obtain their policy preferences, behave in a manner to secure their preferences as best they can. This necessitates negotiating with other actors, usually the other branches of government and fellow justices, and balancing incentives. Where it is not possible to perfectly secure their policy preferences, the strategic model posits that justices will make concessions and negotiate with others in order to best generate their most preferred outcomes in the long run; the justices may not therefore always vote in line with their sincere policy preferences. Three such models are of particular note. The first, developed by Lee Epstein and Jack Knight in *The Choices Justices Make* (1998), views justices as seekers of legal policy who must behave in strategic ways in order to achieve their desired outcomes. This model takes into account how various normative institutions and interactions with colleagues and the other branches of government shape various decisions the justices make, including whether or not to hear the case and whether or not to file concurring or dissenting opinions. The second prominent "rational choice" model, developed by Richard Pacelle, Brett Curry, and Bryan Marshall in *Decision Making by the Modern Supreme Court* (2011), highlights the differences in voting behavior between different types of cases, namely in constitutional vs. statutory cases and in economic vs. civil liberties cases. They find

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[22] Epstein & Knight (1998).

that the justices are more apt to behave strategically in statutory and economic cases and attitudinally in constitutional and civil liberties cases. Epstein has also developed another model, along with William Landes and Richard Posner, in *The Behavior of Federal Judges*. This is a "labor-market theory" of judicial decision-making, which sees federal judges as participants in a labor market constrained by normal economic concerns such as the risk of job loss, aversion to criticism for their decisions, and the necessity of making trade-offs between the desire to engage in interesting and difficult work and the desire for leisure and effort aversion. These incentives structure the federal decision-making process and the way in which judges interact with other actors, particularly higher courts and their compatriots.

Although the various strategic models present interesting and important challenges to the attitudinal model generally, they do not pose sufficient challenge to forego the attitudinal model for my purposes. For one thing, the strategic models take into account a whole variety of cases, related both to civil liberties and to economic issues, and both statutory and constitutional in nature. Constitutional civil liberties cases are primarily influenced by the ideological attitudes of the justices,[23] and it is precisely with such cases that I am concerned. Additionally, for Congress to overturn a constitutional decision from the Supreme Court, they require a super-majority,[24] a difficult task in a political body often divided along partisan lines; in any case, Congress rarely overturns the constitutional decisions of the Supreme Court,[25] and the Court, if it so desires, "can opt out of statutory mode and find constitutional basis for its decisions."[26] The labor-market theory, on the other hand, may very well be suitable for analyzing the decision-making procedure of most federal court judges, but seems unsatisfactory for explaining Supreme Court justices' deci-

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23 Pacelle, Curry, & Marshall (2011).
24 *Ibid.*
25 Epstein & Knight (1998).
26 Segal & Spaeth (2002), page 106.

sion-making. Supreme Court justices have no motive to seek promotion, are in no danger of having their decisions overturned, "have greater power to change the law" and decide on more "novel cases" than do lower courts, opening up the possibility for them to be creative with their decisions,[27] and "[t]he priors of a judge facing a novel case are likely to have a strong ideological component, because ideology is a worldview that gives one an initial take on a new problem."[28] Therefore, in analysis of constitutional civil rights decisions by the Supreme Court, the strategic models provide no substantial benefit over the attitudinal model, which has been demonstrated to be an excellent predictor in search and seizure cases.

Search and Seizure

The Fourth Amendment

Before delving into the attitudinal research regarding the justices' decision-making in Fourth Amendment cases, it is necessary first to briefly elucidate the history of search and seizure jurisprudence. Protections against unreasonable searches and seizures, such as warrant requirements, trace their heritage to the English common law,[29] but became especially salient for Americans, who "had examples of abuses from the colonial era which they could point to in order to justify the need for strong limits on the power of the government to conduct searches and seizures."[30] The American citizen's right against unreasonable search and seizure was deemed of such great importance at the founding of the United States that it was included in the U.S. Constitution's Bill of Rights, embodied in the Fourth Amendment. The language of that amendment, although apparently simple, elegant, and straightforward, has nonetheless been the subject of some of the most bitterly contested legal controversies that have faced the Supreme

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27 Epstein, Landes, & Posner (2013), page 43.
28 *Ibid*, page 45.
29 McInnis (2009).
30 *Ibid* page 17.

Court. This is largely because even language that appears straightforward contains subtle nuances that render interpretation difficult: for example, what types of activities constitute a "search," what exigent circumstances might make a search and seizure "unreasonable," how specific the warrant must be in enumerating the place to be searched and items to be seized, and what exceptions might exist from the warrant requirement, are not immediately obvious from the language of the amendment.

It is thus that the Supreme Court has found it necessary to define vague terms and give stronger legal foundation to Fourth Amendment guarantees. The history of this amendment can be divided into two very broad eras: pre-incorporation and post-incorporation. Prior to the ratification of the Fourteenth Amendment, the substantive guarantees of the U.S. Constitution applied only to the federal government; in *Barron v. Baltimore,*[31] the Court held that the states were not bound by the mandates of the federal Constitution. States were not compelled to recognize rights guaranteed by the Constitution until after the adoption of the Fourteenth Amendment, when the Court began "incorporating" various rights. "Incorporation" is "[t]he process whereby provisions of the Bill of Rights are declared to be included in the due process guarantee of the Fourteenth Amendment and are made applicable to state and local governments"[32]; the Fourth Amendment was not incorporated until 1949 in *Wolf v. Colorado*.[33]

The pre-incorporation period saw some of the most transformative events in the development of search and seizure jurisprudence, particularly the introduction of the exclusionary rule. While the Fourth Amendment established the right of citizens to be free from unreasonable search and seizure, that right initially had little substantive effect, as "[f]or more than a century

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31 32 U.S. (7 Pet.) 243 (1833).
32 Epstein & Walker (2011).
33 338 U.S. 25 (1949).

after the American Revolution, American courts […] allowed evidence which was obtained through an illegal search and seizure to be admissible at trial."[34] This began to change around the turn of the 20th Century, and the Supreme Court finally gave substance to the Fourth Amendment with the establishment of the *exclusionary rule* in *Weeks v. United States*.[35] That rule basically holds that evidence seized in an illegal search is not admissible in a criminal trial. Although *Weeks* was a considerable victory for civil libertarians, the strengthening of Fourth Amendment guarantees was not to be long enjoyed. During Prohibition, the Court began to establish various exceptions to the general rule that a duly required warrant is necessary for a search and seizure.[36] Additionally, in the 1940's, the Court began to expand exceptions to the warrant requirement for searches and seizures conducted incident to a lawful arrest,[37] i.e. those searches and seizures conducted to secure the safety of the arresting officers and prevent the suspect from destroying evidence.

Throughout all of this development, the guarantees of the Fourth Amendment only protected citizens from intrusions by the federal government; citizens would have to rely on guarantees within state constitutions for protection against unreasonable searches and seizures. This began to change when the right against unreasonable searches and seizures was incorporated in 1949 in *Wolf v. Colorado*. While this may appear to have been the dawning of a new era in Fourth Amendment jurisprudence, *Wolf* offered little substantive protection, as it did not incorporate the exclusionary rule; state officials were left free to use illegally seized evidence at trial

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34 McInnis (2009), page 21.

35 232 U.S. 383 (1914).

36 McInnis (2009). See, e.g., *Hester v. United States* 265 U.S. 57 (1924); *Carroll v. United States* 267 U.S. 132 (1925); *Olmstead v. United States* 277 U.S. 438 (1928). It is of particular not that these exceptions really began to take form during Prohibition. My thesis attempts to establish a connection between the justices' Fourth Amendment rulings and "social" case facts, especially case facts related to drugs; it is interesting that so many exceptions arose in response to Prohibition cases in the 1920's, and that the "good faith" exception really began to take form as drug prohibition began to take its modern form as the "War on Drugs"—more on this later.

37 *Ibid.* See, e.g., *Harris v. United States* 331 U.S. 145 (1947).

without penalty. This changed with the Court's landmark decision in *Mapp v. Ohio*,[38] bringing the Court to its modern interpretation of the right against unreasonable search and seizure. *Mapp* represents the fullest realization of the Fourth Amendment's substantive guarantees to date, enshrining the exclusionary rule to "serve as a deterrent to the potential excess of the police" in both federal and state contexts.[39] But again, this outburst of civil libertarianism from the Court was merely ephemeral, and soon the substantive protection offered by the Fourth Amendment was undermined by the "good faith" exception. This exception was established in two cases: for the federal government, in *United States v. Leon*;[40] and for the states, in *Massachusetts v. Shepherd*.[41] The exception basically holds that evidence seized in an unreasonable search is admissible at trial if the police had acted "in good faith," i.e. that they reasonably believed their search to be valid. While in context this may have appeared to be a qualified victory for civil libertarians, given the very real possibility of the Burger Court overturning the exclusionary rule altogether,[42] the "good faith" exception has been a major driving force in the narrowing of Fourth Amendment protections that has occurred concurrent with the increasing conservatism of the Court.[43]

Search & Seizure Research

It is clear that search and seizure jurisprudence is an area with a great degree of variability and constant evolution. To find a coherent logic in this area, which Fourth Amendment

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38 367 U.S. 643 (1961).

39 Pacelle (2004), page 249.

40 468 U.S. 897 (1984). Interestingly, this case involves the seizure of drugs.

41 468 U.S. 981 (1984). Interestingly, although this case involves a gruesome murder, the original warrant had specified that the search was to be conducted for "controlled substances" (Pacelle (2004), page 253).

42 Pacelle (2004).

43 See, e.g., *Arizona v. Evans* 514 U.S. 1 (1995); *Hudson v. Michigan* 547 U.S. 586 (2006); *Herring v. United States* 555 U.S. 135 (2009); *Kentucky v. King* 563 U.S. ___ (2011).

scholars have frequently thought "are a mess,"[44] would certainly be a tremendous feat. Jeffrey Segal appears to have accomplished just such a feat through a series of studies (Segal 1984, 1985, 1986) and through a book coauthored with Harold Spaeth (Segal & Spaeth 2002). In each of these studies, he utilizes the attitudinal model, "hold[ing] that the justices base their deciions on the merits of the facts of the case juxtaposed against their personal policy preferences,"[45] to predict the outcomes of search and seizure cases before the Court between the 1962 and 1981 terms for the original series of articles and outcomes between the 1962 and 1998 terms in the book. The cases are examined from the 1962 term because it is the first post-*Mapp* term, and therefore analysis is restricted to cases for which the fullest modern interpretation of the Fourth Amendment applies. Even critics of the attitudinal model agree that "[Segal's] work basically defines the factors to be considered whenever one looks at these cases."[46] It is therefore necessary to briefly describe Segal's research so as to establish exactly what it is that I am studying.

Segal's early research set out to discover "if [the justices'] policy preferences parallel a legal decision structure,"[47] and largely succeeds at establishing the effect of judicial policy preferences on the justices' decision-making. Constructing a successful model is difficult, especially considering that "there are about 500 different [legally relevant] factors affecting search and seizure decisions."[48] Considering all of these factors would be a daunting task, even for such esteemed jurists as the justices of the Supreme Court: "it is [therefore] suggested herein that the justices monitor a relatively small number of facts from the case, and that the presence of these facts strongly predisposes the justice in his decision on the reasonableness of a search and sei-

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[44] Segal (1984), page 891).
[45] Segal & Spaeth (2002), page 312.
[46] Kritzer & Richards (2005), page 42.
[47] Segal (1984), page 892. Specification of the parameters Segal considers is provided in **Appendix A**.
[48] Segal (1986), page 942.

zure."[49] Utilizing logit regression to estimate the impact of judicial policy preferences vis-á-vis case facts, Segal is able to establish a model that, in its most mature form, accurately predicts over 75% of the outcomes.[50] This is a remarkable accomplishment, especially considering that prior to these studies social scientists regarded search and seizure jurisprudence as a cacophonous mess. However, as scientists, we cannot rest satisfied with a 75% prediction rate, and therefore must attempt to discover what other facts might affect the justices' decisions. As I have previously mentioned, the research to date leaves out considerations of "social" case facts. The justices of the Supreme Court are in a position, more than perhaps any other individual citizens, to affect public policy, and it is therefore quite reasonable to suspect that their social policy preferences play a role in their decision-making. I elaborate my methods for discovering the influence of these preferences below.

Data & Methods

The model is based on that developed by Jeffrey Segal in a series of articles (1984, 1985, 1986) and in his masterful book *The Supreme Court and the Attitudinal Model Revisited*, coauthored with Harold Spaeth (2002). Cases in the analyses are drawn from Segal's "scamR" dataset.[51] Two sets of independent variables are included in the model: first, those variables examined by Segal & Spaeth in Chapter 8 of *The Supreme Court and the Attitudinal Model Revisited*; and second, I have added variables bringing what I call "social" case facts, i.e. facts of the case that have no bearing on the legal status of the search, into the model. The first set of variables incorporates "legal" case facts, specified in **Appendix A**. The second set of independent variables includes what kinds of items were seized in the search and the crime for which criminal de-

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[49] *Ibid*.

[50] Segal & Spaeth (2002).

[51] Additional analyses, presented in **Appendix B**, are constructed using my own original dataset. The appendix specifies the parameters of variables in the dataset.

fendants are charged. Coding for this second set is drawn from the lower court's decisions, acquired through the LexisNexis Academic database; where LexisNexis provides no lower court decision, or the lower court decision provides insufficient information for coding, I draw facts from the next court down in the hierarchy. Because I am concerned with outcomes in criminal cases, I have dropped non-criminal cases from the analyses, bringing the number of cases examined to 210.

Specification:

Dependent Variable

The dependent variable is the decision of the Supreme Court as to the reasonableness of a search and seizure. As in Segal (1984), the Supreme Court's decisions are coded as 1 if the Court upholds the search (a "conservative" decision), and 0 if the Court strikes the search (a "liberal" decision).

Independent Variables

Specification of the independent variables used by Segal and Spaeth (2002) is provided in **Appendix A**. There is, however, one variable from that study that I have coded differently: *Attitudes*: Rather than use the Segal-Cover scores for the attitudes of the Court, I use the median justice's Martin-Quinn score for each respective term as a proxy for the Court's attitudes. The Martin-Quinn scores have the advantage of changing between terms, and are thus better able to capture variability in the ideological leanings of the Court over time.

"Social" case facts include 1) items that are seized in the relevant search and 2) the charges brought against the criminal defendant. The variables for the items seized follow: *Alcohol*: If the police seized either non-tax alcoholic beverages or paraphernalia used for producing bootleg alcohol, the value is 1; if no alcohol is seized, the value is 0.

Drug: If the police seized controlled substances illegally possessed by the suspect, the value is 1; if no drugs were found on the suspect, the value is 0.

Physical Evidence (PhysEv): Physical evidence includes blood, fiber, clothing, fingerprints, footprints, and other forensic evidence; this also includes evidence establishing violations of environmental or safety standards by businesses. If police seized such items, the value is 1; if no such evidence was seized, the value is 0.

Contraband: Contraband includes items used for nefarious or criminal purposes, such as gambling paraphernalia or illicit checks. If a search produced such items, the value is 1; if not, the value is 0.

Weapon: If a search yields a weapon or weapons used in the commission of a crime, or weapons that are illegal to own, the value is 1; if no weapons were seized by police, the value is 0.

Stolen Property (PropStol): If in the course of the search, the police find the suspect to be in possession of stolen property, the value is 1; if the suspect is not found to be in possession of such items, the value is 0.

Papers: Papers include ledgers and evidence of fraud or other financial crimes. If a search yields such items, the value is 1; if no such evidence arises, the value is 0.

"Social facts" also include the types of charges criminal defendants face. These charges are divided thusly:

Personal Crimes (Person): If the suspect is charged with a crime that has a victim with whom the suspect had direct contact, such as murder, assault, rape, or armed robbery, the value is 1; if the crime did not involve contact between the perpetrator and the victim, the value is 0.

Property Crimes (Property): If the suspect is charged with crimes such as larceny, auto theft, arson, burglary, or other such crimes that do not involve direct contact between perpetrator and

victim, the value is 1; if the crime either involved such contact or did not involve infringements on the property rights of the victim, the value is 0.

Financial Crimes (Finance): If the suspect is charged with crimes with financial gain as the motive that do not involve violation of a victim's property rights, such as fraud, illicit gambling, or racketeering, the value is 1; if the charge is for other crimes, the value is 0.

Possession (Possess): If the defendant is charged with mere possession of controlled substances, the value is 1; if not, the value is 0.

Trafficking (Traffic): If the suspect is charged with a crime involving the sale or distribution of controlled substances, i.e. possession with intent to distribute or narcotics trafficking, the value is 1; if the charge is of a different nature, the value is 0.

There are several charges that suspects face in these cases that do not neatly fit into these categories, such as smuggling of illegal immigrants, DUI/DWI, and illegal possession of firearms. This variable is left out of the analysis: with a comprehensive set of variables, it is necessary to exclude one variable for logit analysis to work.

Analyses

I run two separate sets of analyses, each containing three separate analyses: the first set includes the lower court's decisions as a variable, while the second substitutes [Attitudes] for the lower court decisions. Within each set, the first analysis presents a reconstruction of Segal and Spaeth's (2002) analysis as presented in Chapter 8 of *The Supreme Court and the Attitudinal Model Revisited* (substituting my *Attitudes* variable for theirs in the second set)[52]; the second analysis incorporates the crime variables, and the third includes the items seized variables. The analyses are performed in two separate sets so as to avoid statistical noise caused by the signifi-

[52] See Table 8.1 on page 318 and 8.3 on page 325.

cant correlation between *Attitudes* and the *Lower Court Decision* variable, and the analyses within the sets are performed separately so as to avoid statistical noise caused by high correlations between certain items seized variables and certain crime variables.[53] While analyzing the justices individually may seem attractive, running such analyses generates a good deal of statistical noise for many justices who either have very few search and seizure decisions to their credit or whose decisions are highly correlated with one or more of the independent variables.[54] All analyses utilize logit regression.

Results

Interpreting logit regression is a bit difficult, so a little preliminary is necessary. Logit analysis expresses effects in terms of a coefficient that represents "the change in the log of the odds ration for a conservative decision given the presence of each variable."[55] Because this change is measured considering the increase (or decrease) in the likelihood of a conservative outcome, an increase in the likelihood of a conservative decision is expressed by a positive coefficient, and a decrease in the likelihood of the Court upholding the search is reflected by a negative coefficient. Larger coefficients represent greater impacts in the direction indicated by the sign. The first set of tables (labeled "1.X") incorporates the *Lower Court Decision* variable, while the second set (labeled "2.X") incorporates *Attitudes*.

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53 For example, both the *Possession* and the *Trafficking* variables are highly correlated with the *Drug* variable, and the *Papers* variable is highly correlated with the *Financial Crimes* variable.

54 It may be possible, in the future, to run analyses of the justices' decisions according to ideological groupings, i.e. analyzing "Conservatives'" and "Liberals'" decisions separately.

55 Segal & Spaeth (2002), page 317.

Table 1.1: Replication of Segal & Spaeth (2002) Determinants of Supreme Court Decisions with Lower Court Decision

	Coef.	Std. Err.	z	P>|z|	[95% Conf.	Interval]
House	-2.391898	.8057586	-2.97	0.003	-3.971156	-.8126401
Business	-2.002775	.8537333	-2.35	0.019	-3.676061	-.329488
Person	-1.624912	.7812747	-2.08	0.038	-3.156183	-.0936421
Car	-1.498233	.8254994	-1.81	0.070	-3.116182	.119716
Search	-.9746464	.551262	-1.77	0.077	-2.0551	.1058073
Warrant	1.256818	.6726427	1.87	0.062	-.0615379	2.575173
ProbCaus	-.1329631	.431861	-0.31	0.758	-.979395	.7134688
Incident	2.833364	1.165536	2.43	0.015	.5489557	5.117773
After	.6695805	.5555078	1.21	0.228	-.4191948	1.758356
Unlawful	.2385656	.5556707	0.43	0.668	-.8505289	1.32766
Exceptions	1.184186	.3564586	3.32	0.001	.4855403	1.882832
LCDec	-1.63291	.3578915	-4.56	0.000	-2.334365	-.9314561
Constant	3.237089	.897748	3.61	0.000	1.477535	4.996643

The replication of Segal & Spaeth's (2002) analysis[56] yields promising results. Dropping a few cases has reduced the measured effects and the significances a little bit, but virtually all of the variables that are significant in Segal & Spaeth's analysis remain significant, and at similar levels (with the exception of the *After Arrest* variable, which was not highly significant in the original analysis). For the most part, results reveal what observers would expect: houses are protected more than other potential locations of searches, and vehicles are protected least of all; the presence of a valid warrant increases the probability of a search being upheld. Results are particularly interesting for the *Probable Cause*, *Lower Court Decision*, and *Incident Arrest* variables. The lower court's findings of *Probable Cause* have a negligible effect on decisions, and that effect is not significant. It appears, then, that the Supreme Court does not give weight to this particular legal fact. On the other hand, the *Lower Court Decision* is both highly significant and has a substantial effect. It appears that the Supreme Court is quite apt to overturn the cases it hears. This should not be entirely surprising, as the Court has a large amount of discretion over

[56] See Table 8.1, page 318.

which cases it hears, and the justices probably consider findings they disagree with more interesting or feel more compelled to correct "mistakes" by the lower court. The *Incident Arrest* variable displays the largest impact of any variable and is quite significant. This is, again, not entirely surprising, considering that the exception to the warrant requirement for searches incident to arrest is "the most important" such exception.[57] It is not difficult to see the rationale: searches incident to arrest are conducted to ensure police safety, and the Court would understandably be sympathetic to efforts by law enforcement to secure the safety of officers.

Table 1.2: Determinants of Supreme Court Decisions with Crime Variables and Lower Court Decision

	Coef.	Std. Err.	z	P>|z|	[95% Conf.	Interval]
House	-2.685757	.8431529	-3.19	0.001	-4.338306	-1.033208
Business	-1.981927	.8783878	-2.26	0.024	-3.703535	-.2603181
Person	-1.781697	.8118371	-2.19	0.028	-3.372868	-.1905251
Car	-1.833905	.871309	-2.10	0.035	-3.54164	-.1261712
Search	-.9606967	.5808653	-1.65	0.098	-2.099172	.1777784
Warrant	1.107744	.6994109	1.58	0.113	-.2630763	2.478564
ProbCaus	-.1087243	.4560059	-0.24	0.812	-1.002479	.7850309
Incident	2.96345	1.233155	2.40	0.016	.5465119	5.380389
After	.7920042	.5842821	1.36	0.175	-.3531677	1.937176
Unlawful	.0823139	.5693267	0.14	0.885	-1.033546	1.198174
Exceptions	1.280327	.3753234	3.41	0.001	.5447068	2.015948
LCDec	-1.684982	.3895477	-4.33	0.000	-2.448481	-.9214825
Person	-.1802821	.6512442	-0.28	0.782	-1.456697	1.096133
Property	-.5254672	.729226	-0.72	0.471	-1.954724	.9037895
Finance	-.3866403	.6967018	-0.55	0.579	-1.752151	.97887
Possess	-.1790419	.679496	-0.26	0.792	-1.51083	1.152746
Traffic	.8536044	.6362821	1.34	0.180	-.3934855	2.100694
Constant	3.380726	.9784865	3.46	0.001	1.462928	5.298524

When the crime variables are added to the analysis, no radical changes occur. The magnitude of the effects and the significances vary somewhat, but not tremendously. One exception is the *Warrant* variable, which becomes marginally significant; however, it is still very close to the .05 threshold for significance (one-tailed), and clearly still has a considerable effect on outcomes. Unfortunately, none of the crime variables exhibit strong effects on the outcomes, and

[57] Segal & Spaeth (2002), page 317.

none are significant. This suggests that the type of charge the subject of the search faces generally does not have much of an impact on the way the justices decide on the reasonableness of a search. There is one variable, however, that arouses deeper interest. The *Trafficking* variable yields the most substantial effect and the greatest level of significance. Although it does not satisfy the .05 threshold for labeling a variable *significant*, it has a p-value of .09 (one-tailed), which suggests the positive effect may not be entirely accidental.

Table 1.3: Determinants of Supreme Court Decisions with Item Seized Variables and Lower Court Decision

	Coef.	Std. Err.	z	P>|z|	[95% Conf.	Interval]
House	-2.26394	.8428859	-2.69	0.007	-3.915966	-.6119138
Business	-1.718334	.8876857	-1.94	0.053	-3.458166	.021498
Person	-1.426532	.8247763	-1.73	0.084	-3.043064	.1900002
Car	-1.534873	.8891739	-1.73	0.084	-3.277622	.2078753
Search	-.8197494	.5797023	-1.41	0.157	-1.955945	.3164462
Warrant	1.287614	.696229	1.85	0.064	-.0769695	2.652198
ProbCaus	-.2370062	.4455222	-0.53	0.595	-1.110214	.6362012
Incident	2.688411	1.20158	2.24	0.025	.3333573	5.043465
After	.7490353	.5767973	1.30	0.194	-.3814666	1.879537
Unlawful	.2140542	.5807619	0.37	0.712	-.9242182	1.352327
Exceptions	1.331933	.3760138	3.54	0.000	.5949593	2.068906
LCDec	-1.633856	.3720864	-4.39	0.000	-2.363132	-.9045797
Alcohol	.2390123	1.026133	0.23	0.816	-1.772172	2.250197
Drug	.7602951	.4669233	1.63	0.103	-.1548577	1.675448
PhysEv	.2441712	.6700269	0.36	0.716	-1.069057	1.5574
Contraband	1.314448	.8980009	1.46	0.143	-.4456016	3.074497
Weapon	.4452736	.7225092	0.62	0.538	-.9708184	1.861366
PropStol	1.12022	.7792787	1.44	0.151	-.4071387	2.647578
Papers	.0557942	.6427623	0.09	0.931	-1.203997	1.315585
Constant	2.448966	.9819065	2.49	0.013	.5244643	4.373467

Again, adding the items seized variables to the analysis, while it does decrease observed effects and significances slightly, does not radically alter results gleamed from the initial analysis. The items seized variables are what make this analysis particularly exciting. Although none of these variables surpasses the .05 threshold of significance, a few come very close. The two variables with the largest effect, *Contraband* and *Stolen Property*, are at least marginally signifi-

cant,[58] and may very well therefore have a real effect on the Court's decisions. The most interesting result regards the *Drug* variable. While the effect of this variable is not large relative to the effects of the legal variables, it is larger than the other items seized variables (except for the *Contraband* and *Stolen Property* variables), and comes extremely close to the threshold of significance.[59] This is in line with my hypothesis that drug variables in particular have a real effect on the decision-making of the Court. As we shall see, this hypothesis bears out in the second set of analyses as well.

Table 2.1: Replication of Segal & Spaeth (2002) Determinants of Supreme Court Decisions with Attitudes

	Coef.	Std. Err.	z	P>|z|	[95% Conf.	Interval]
House	-2.164933	.8109576	-2.67	0.008	-3.754381	-.5754856
Business	-1.889272	.8701379	-2.17	0.030	-3.594711	-.1838334
Person	-1.712625	.7946929	-2.16	0.031	-3.270195	-.1550557
Car	-1.608922	.8348676	-1.93	0.054	-3.245232	.0273883
Search	-1.368918	.5633229	-2.43	0.015	-2.473011	-.2648256
Warrant	.4496884	.6526395	0.69	0.491	-.8294615	1.728838
ProbCaus	.0075403	.4206702	0.02	0.986	-.8169582	.8320388
Incident	2.622965	1.154621	2.27	0.023	.3599503	4.88598
After	.7057111	.5412764	1.30	0.192	-.3551712	1.766593
Unlawful	.1185073	.5526139	0.21	0.830	-.964596	1.201611
Exceptions	1.066083	.3465955	3.08	0.002	.3867679	1.745397
Attitudes	1.327306	.3239359	4.10	0.000	.6924035	1.962209
Constant	2.516713	.892268	2.82	0.005	.7679003	4.265527

Once again, the replication of Segal & Spaeth's (2002) analysis[60] yields rather unsurprising results. The coefficients are rather different between his and my results as a result of differing parameters for the *Attitudes* variable, but significances tend to hold. The one exception is the *Warrant* variable, which loses substantially in significance. Aside from this anomaly, the analysis here appears consistent with Segal & Spaeth's findings.

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58 *Contraband*: p=.072; *Stolen Property*: p=.076 (one-tailed).

59 *Drug*: p=.052 (one-tailed).

60 See table 8.3, page 325.

Table 2.2: Determinants of Supreme Court Decisions with Crime Variables

	Coef.	Std. Err.	z	P>|z|	[95% Conf.	Interval]
House	-2.294253	.817968	-2.80	0.005	-3.89744	-.6910649
Business	-1.81748	.8763721	-2.07	0.038	-3.535138	-.099822
Person	-1.801536	.8014345	-2.25	0.025	-3.372318	-.2307528
Car	-1.807537	.8553008	-2.11	0.035	-3.483896	-.1311782
Search	-1.294726	.5922368	-2.19	0.029	-2.455489	-.1339635
Warrant	.2384102	.6715785	0.35	0.723	-1.077859	1.55468
ProbCaus	.0845811	.4327495	0.20	0.845	-.7635924	.9327546
Incident	2.508984	1.157506	2.17	0.030	.2403142	4.777653
After	.8039112	.5656794	1.42	0.155	-.3048	1.912622
Unlawful	.0792553	.5646206	0.14	0.888	-1.027381	1.185891
Exceptions	1.112004	.3639406	3.06	0.002	.3986935	1.825314
Attitudes	1.194316	.3338945	3.58	0.000	.5398945	1.848737
Person	-.5714519	.6183184	-0.92	0.355	-1.783334	.6404298
Property	-1.010938	.67482	-1.50	0.134	-2.333561	.3116846
Finance	-.37872	.6794036	-0.56	0.577	-1.710327	.9528867
Possess	-.1465091	.6619976	-0.22	0.825	-1.444001	1.150982
Traffic	.2551436	.584986	0.44	0.663	-.8914079	1.401695
Constant	2.803114	.9596639	2.92	0.003	.9222069	4.68402

As in the first set of analyses above, the addition of the crime variables yields no radical divergence in results. The coefficients for the crime variables themselves are not substantial (except for the *Property Crimes* variable), and none are significant. Unfortunately, where it appeared above as if the *Trafficking* variable might have interesting potential as an influential case fact, it here loses tremendously in both significance and effect. On the other hand, the *Property Crimes* variable has gained both in effect and in significance.[61]

[61] *Property Crimes*: p=.067 (one-tailed).

Table 2.3: Determinants of Supreme Court Decisions with Items Seized Variables and Attitudes

	Coef.	Std. Err.	z	P>|z|	[95% Conf.	Interval]
House	-1.978821	.8470141	-2.34	0.019	-3.638938	-.3187041
Business	-1.576629	.9015412	-1.75	0.080	-3.343618	.1903591
Person	-1.484758	.8291233	-1.79	0.073	-3.10981	.1402934
Car	-1.599051	.8857483	-1.81	0.071	-3.335086	.1369842
Search	-1.207959	.583386	-2.07	0.038	-2.351374	-.0645432
Warrant	.4324144	.6688467	0.65	0.518	-.8785011	1.74333
ProbCaus	-.1142442	.4363228	-0.26	0.793	-.9694212	.7409328
Incident	2.585449	1.173286	2.20	0.028	.2858504	4.885048
After	.7789022	.5559091	1.40	0.161	-.3106596	1.868464
Unlawful	.1236284	.5761096	0.21	0.830	-1.005526	1.252782
Exceptions	1.190585	.3654454	3.26	0.001	.4743254	1.906845
Attitudes	1.386833	.3467541	4.00	0.000	.7072073	2.066459
Alcohol	.2056744	1.148818	0.18	0.858	-2.045968	2.457317
Drug	.7739428	.4547982	1.70	0.089	-.1174454	1.665331
PhysEv	.1463616	.6826889	0.21	0.830	-1.191684	1.484407
Contraband	1.311768	.8805566	1.49	0.136	-.4140914	3.037627
Weapon	.4176446	.6885204	0.61	0.544	-.9318306	1.76712
PropStol	1.004833	.7379163	1.36	0.173	-.441456	2.451123
Papers	.4215464	.6548645	0.64	0.520	-.8619644	1.705057
Constant	1.64144	.9699182	1.69	0.091	-.2595651	3.542444

Adding the items seized variables does not much alter the significances or effects of the variables already considered in the base analysis. In this set of analyses, however, the drug variable becomes significant at the .05 level and has a considerable positive effect on the justices' decision-making.[62] Considering this finding in conjunction with the similar result in Table 1.3, it appears that the members of the Court do indeed weigh the seizure of drugs differently than other seizures, even when we control for the effects of other variables. For at least this variable, then, it appears that the justices allow their social policy preferences to invade their decision-making processes.

In order to assess the magnitude of the impact of the *Drug* variable on the Court's decision, I will compare the differences in probabilities of the Court's finding the search reasonable depending on the presence of the *Drug* variable with the differences in probabilities of the Court's finding the search reasonable depending on the presence of a variable that has a highly

[62] *Drug*: p=.046 (one-tailed).

significant and substantial effect, namely the *House* variable. Probabilities for variables are calculated based on 10,000 simulations of the analysis in Stata, holding all other variables at their median value.[63] These probabilities are presented in two tables: Table 1.4 takes probabilities from analyses run with the *Lower Court Decision* variable, and Table 2.4 takes probabilities from analyses that include the *Attitudes* variable.

Table 1.4: Probabilities of Court Rulings for *House* and *Drug*, from the Analysis with Lower Court Decisions

House=0

Quantity of Interest	Mean	Std. Err.	[95% Conf.	Interval]
Pr(sctdec=lib)	.1931064	.1263229	.0354893	.5090262
Pr(sctdec=con)	.8068936	.1263229	.4909738	.9645107

House=1

Quantity of Interest	Mean	Std. Err.	[95% Conf.	Interval]
Pr(sctdec=lib)	.6434055	.1269509	.371308	.8596699
Pr(sctdec=con)	.3565945	.1269509	.1403301	.628692

Drug=0

Quantity of Interest	Mean	Std. Err.	[95% Conf.	Interval]
Pr(sctdec=lib)	.1931064	.1263229	.0354893	.5090262
Pr(sctdec=con)	.8068936	.1263229	.4909738	.9645107

Drug=1

Quantity of Interest	Mean	Std. Err.	[95% Conf.	Interval]
Pr(sctdec=lib)	.1069839	.0818498	.0173616	.3267078
Pr(sctdec=con)	.8930161	.0818498	.6732922	.9826384

If the value of the *House* variable is 0, the Supreme Court has about an 81% chance of upholding a search. This probability drops dramatically, to about 36%, if the value of the *House* variable is 1. This is exactly what we would expect given the large negative coefficient and high

[63] See King, Tomz, and Wittenberg (2000) pp. 349-359 for further elaboration of simulation-based analysis.

significance of the *House* variable.[64] If the *Drug* variable is coded 0, the court has a nearly 81% chance of finding a search and seizure reasonable; this probability increases to over 89% if the value of the *Drug* variable is 1. This is consistent with the smaller, positive coefficient and marginal level of significance this variable achieves in the analysis.[65] It appears that the presence of drugs in a particular case has a not inconsiderable impact on the justices' findings of the reasonableness of a search, though not as substantial an impact as other case facts.

Table 2.4: Probabilities of Court Rulings for *House* and *Drug*, from the Analysis with Attitudes

House=0

Quantity of Interest	Mean	Std. Err.	[95% Conf.	Interval]
Pr(sctdec=lib)	.2642012	.1431251	.0606815	.6053076
Pr(sctdec=con)	.7357988	.1431251	.3946924	.9393185

House=1

Quantity of Interest	Mean	Std. Err.	[95% Conf.	Interval]
Pr(sctdec=lib)	.6827369	.1130212	.438225	.8715753
Pr(sctdec=con)	.3172631	.1130212	.1284247	.561775

Drug=0

Quantity of Interest	Mean	Std. Err.	[95% Conf.	Interval]
Pr(sctdec=lib)	.2642012	.1431251	.0606815	.6053076
Pr(sctdec=con)	.7357988	.1431251	.3946924	.9393185

Drug=1

Quantity of Interest	Mean	Std. Err.	[95% Conf.	Interval]
Pr(sctdec=lib)	.1514127	.1018448	.0276841	.422271
Pr(sctdec=con)	.8485873	.1018448	.577729	.9723159

The probabilities of the Supreme Court's decisions for variants of the *House* and *Drug* variables from the analysis with *Attitudes* yields results very similar to those presented in Table 1.4. Once again, the probability of the Supreme Court upholding a search drops considerably

64 See Table 1.3.

65 *Supra*.

(from ~74& to ~32%) if the search and seizure took place at the suspect's home, once again consistent with the variable's large, negative coefficient and high level of significance.[66] The *Drug* variable also yields similar probabilities to those presented in Table 1.4, but the difference is slightly more substantial: the probability that the Court upholds a search increases from almost 74% to just below 85% if drugs are seized from the defendant; the larger effect is due to the greater degree of significance and larger coefficient this variable achieves in the analysis with attitudes.[67] Once again, it appears that the presence of drugs in a case leads the justices to make more conservative decisions than they would were drugs not a factor in the case.

Conclusion

It appears that, by and large, social facts do not much influence the decisions of the justices. The charges defendants face make little difference in the evaluation of searches and seizures by the Court, as does the type of thing seized from the subject of the search. The one notable exception is the *Drug* variable, which does indeed influence the decision-making of the justices in a more conservative direction. What is it that causes the justices to look differently, and particularly more restrictively, on drugs than on other species of evidence? A potential explanation may be that the federal government has not waged a social, moral and political *War* on other items: there is no general "War on Weapons," "War on Ledgers," or "War on Gambling Paraphernalia"; there is, however, a strident and unwavering "War on Drugs." Very public and intensive anti-drug efforts of lawmakers and law enforcement and the strong political rhetoric of the Drug War may make political attitudes regarding drugs more salient for the justices than attitudes they may hold regarding the prosecution of other types of crimes or the seizure of other items. It is interesting to note that many of the opinions that have moved the Court in a more

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[66] See Table 2.3.

[67] *Supra*.

conservative direction have come out of cases having to do with the seizure of drugs.[68] This is particularly disturbing for civil libertarians and other critics of the War on Drugs, and offers confirmation of fears that this policy has led to a curtailment of Constitutionally-guaranteed rights through the Courts, who ought not be legislating their social policy preferences. If, however, critics become aware of the Court's behavior in this arena, they may be able to call public attention to the justices' social legislating, and potentially exercise some influence over how the justices decide cases. Considering the history and the science of judicial decision making, this may unfortunately be too much to hope for, but it is certainly worth trying.

[68] Particularly *United States v. Leon*, which established the "good faith" exception.

Appendix A: Coding For Segal & Spaeth (2002) Dataset[69]

All coding is drawn from the lower court decision, except for the *Exceptions* variable, which draws on the Supreme Court's findings. The *Attitudes* variable is different in my analyses: where Segal & Spaeth use Segal Cover scores to measure the Court's attitudes, I use the median justice's Martin Quinn score for the relevant term.

House:	0=No	1=Yes
Business:	0=No	1=Yes
Person:	0=No	1=Yes
Car:	0=No	1=Yes
Search:	0=Less intrusive activities such as frisks	1=Full search
Warrant:	0=No	1=Yes
Probable Cause (ProbCaus):	0=No	1=Yes
Incident Arrest (Incident):	0=No	1=Yes
After Arrest (After):	0=No	1=Yes
After Unlawful Arrest (Unlawful):	0=No	1=Yes
Exceptions:	Additive Index: Starts 0, +1 for each exception found by the Court	
Lower Court Decision (LCDec):	0=Struck	1=Upheld
Attitudes:	Median justice's Martin-Quinn score for the respective term.	

[69] The parameters, while not explicitly laid out in the Segal & Spaeth (2002) study, are elaborated in Segal (1984); however, the three arrest variables are coded simply according to the lower court's finding, not according to the proportion of lower court justices findings pertaining to the status of the arrest as in Segal (1984).

Appendix B: Results From my own Dataset

Methods:

In addition to replicating Segal & Spaeth's (2002) analysis and inserting my own variables into their dataset, I have constructed my own dataset. The parameters are identical between our datasets regarding the Segal & Spaeth (2002) Chapter 8 analyses[70], but I have quibbled with Segal & Spaeth's coding in a few cases; the differences are for the most part minor. The most significant divergence between my coding and theirs is that where Segal & Spaeth drew from Supreme Court decisions for the [Exceptions] variable, I rely entirely on the lower court's opinions, so as to avoid the circularity problem of relying on information from Supreme Court decisions to predict those very decisions.

Results:

Table B.1: Replication of Segal & Spaeth (2002)

	Coef.	Std. Err.	z	P>|z|	[95% Conf.	Interval]
House	-.227815	.7280121	-0.31	0.754	-1.654692	1.199063
Business	-.3079383	.7708476	-0.40	0.690	-1.818772	1.202895
Person	-.2347855	.7185278	-0.33	0.744	-1.643074	1.173503
Car	.4117651	.7536967	0.55	0.585	-1.065453	1.888983
Search	-.4833279	.5100833	-0.95	0.343	-1.483073	.516417
Warrant	.8344959	.622911	1.34	0.180	-.3863872	2.055379
ProbCaus	-.3415211	.4226862	-0.81	0.419	-1.169971	.4869287
Incident	.5312885	.7822494	0.68	0.497	-1.001892	2.064469
After	.3875659	.6479481	0.60	0.550	-.8823891	1.657521
Unlawful	-.4230044	.547786	-0.77	0.440	-1.496645	.6506364
Exceptions	.273615	.5591493	0.49	0.625	-.8222974	1.369528
LCDec	-2.378084	.4109391	-5.79	0.000	-3.18351	-1.572658
Constant	2.043622	.8177442	2.50	0.012	.4408723	3.646371

Table B.1 presents a replication of the Segal & Spaeth (2002) analyses, using my own dataset in the model. It appears that my minor quibbling with Segal's coding produces results that are radically divergent from those presented in *The Supreme Court and the Attitudinal Model*. With the sole exception of the [Lower Court Decision] variable, not a single variable has a sig-

[70] See Appendix A.

nificant impact on the Supreme Court's findings of the reasonableness of the search. While disappointing, these results are not entirely disheartening: they may suggest that Segal's (1984) assertion "that beneath the so-called mess of search and seizure decisions lies a coherent set of decisions" (892) may not be entirely accurate, or if it exists, that it perhaps has not yet been discovered. If that is the case, and search and seizure jurisprudence is more enigmatic than has been thought since Segal's groundbreaking studies, then political scientists are faced with an intensely interesting and much more complex set of problems in this research area.

Table B.2: Crime Variables

	Coef.	Std. Err.	z	P>|z|	[95% Conf.	Interval]
House	-.3152322	.7313407	-0.43	0.666	-1.748634	1.118169
Business	-.0917074	.7852252	-0.12	0.907	-1.630721	1.447306
Person	-.312667	.7269263	-0.43	0.667	-1.737416	1.112082
Car	.301058	.7615925	0.40	0.693	-1.191636	1.793752
Search	-.5607377	.5274522	-1.06	0.288	-1.594525	.4730496
Warrant	.8122678	.6221565	1.31	0.192	-.4071366	2.031672
ProbCaus	-.2822678	.4285686	-0.66	0.510	-1.122247	.5577113
Incident	.7003181	.8160748	0.86	0.391	-.8991592	2.299795
After	.416585	.6655528	0.63	0.531	-.8878745	1.721045
Unlawful	-.4237763	.5577624	-0.76	0.447	-1.51697	.6694179
Exceptions	.3455581	.5793693	0.60	0.551	-.7899849	1.481101
LCDec	-2.401282	.4241952	-5.66	0.000	-3.23269	-1.569875
Person	-.127184	.6129194	-0.21	0.836	-1.328484	1.074116
Property	-.5766372	.6498684	-0.89	0.375	-1.850356	.6970814
Finance	-.3689244	.646339	-0.57	0.568	-1.635726	.8978768
Possess	.0984244	.652374	0.15	0.880	-1.180205	1.377054
Traffic	.5100059	.5697591	0.90	0.371	-.6067014	1.626713
Constant	2.11593	.9174613	2.31	0.021	.3177391	3.914121

Tables B.2 and B.3, incorporating the items seized and crime variables respectively, reveal much the same results as does the bare recreation of Segal & Spaeth's (2002) analysis. Notably, the significance of several of the variables increases, particularly the [House] variable, while that of some others (i.e. the *Business* variable) decreases. The impact of the original variables also varies quite a bit. While these results continue to be a bit disappointing, there is a silver

lining: as in the analysis from the Segal dataset, the *Drug* variable is quite a bit more significant than the other items seized variables, and has a sizeable positive effect.

Table B.3: Item Seized Variables

	Coef.	Std. Err.	z	P>|z|	[95% Conf.	Interval]
House	-.3947731	.7672154	-0.51	0.607	-1.898488	1.108942
Business	-.2640855	.8208727	-0.32	0.748	-1.872966	1.344795
Person	-.3539741	.7544842	-0.47	0.639	-1.832736	1.124788
Car	.0276325	.7874355	0.04	0.972	-1.515713	1.570978
Search	-.5334778	.5370523	-0.99	0.321	-1.586081	.5191254
Warrant	.9701356	.6583053	1.47	0.141	-.3201191	2.26039
ProbCaus	-.5674321	.4388484	-1.29	0.196	-1.427559	.292695
Incident	.5061086	.8129362	0.62	0.534	-1.087217	2.099434
After	.486106	.6627647	0.73	0.463	-.8128889	1.785101
Unlawful	-.463944	.5739864	-0.81	0.419	-1.588937	.6610487
Exceptions	.4011036	.5812586	0.69	0.490	-.7381423	1.54035
LCDec	-2.402295	.4226766	-5.68	0.000	-3.230725	-1.573864
Alcohol	-1.23767	1.109689	-1.12	0.265	-3.412622	.9372807
Drug	.6649523	.476592	1.40	0.163	-.2691509	1.599056
PhysEv	.3226601	.6778927	0.48	0.634	-1.005985	1.651305
Contraband	1.029572	.8631039	1.19	0.233	-.6620805	2.721224
Weapon	.7635403	.7133602	1.07	0.284	-.6346199	2.161701
PropStol	.8905863	.7886872	1.13	0.259	-.6552123	2.436385
Papers	-.1079723	.666989	-0.16	0.871	-1.415247	1.199302
Constant	1.889686	.8815272	2.14	0.032	.1619249	3.617448

References

Cases:

Arizona v. Evans, 514 U.S. 1 (1995).

Barron v. Baltimore, 32 U.S. (7 Pet.) 243 (1833).

Bush v. Gore, 531 U.S. 98 (2000).

Herring v. United States, 555 U.S. 135 (2009).

Hudson v. Michigan, 547 U.S. 586 (2006).

Kentucky v. King, 365 U.S. ____ (2011).

Mapp v. Ohio, 367 U.S. 643 (1961).

Massachusetts v. Shepherd, 486 U.S. 981 (1984).

Skinner v. Railway Labor Executives Assn., 489 U.S. 602 (1988).

United States v. Leon, 468 U.S. 897 (1984).

Weeks v. United States, 232 U.S. 383 (1914).

Wolf v. Colorado, 338 U.S. 25 (1949).

Books & Articles:

Baum, Lawrence. 2010. *The Supreme Court*. 10th ed. Washington, D.C.: CQ Press.

Epstein, Lee and Jack Knight. 1998. *The Choices Justices Make*. Washington, D.C.: CQ Press.

Epstein, Lee, William M. Landes and Richard A. Posner. 2013. *The Behavior of Federal Judges*. Cambridge: Harvard University Press.

Epstein, Lee and Thomas G. Walker. 2011. *Constitutional Law for a Changing America: Institutional Powers and Constraints*. 7th ed. Washington, D.C.: CQ Press.

Hagle, Timothy M. and Harold J. Spaeth. 1993. "Ideological Patterns in the Justices' Voting in the Burger Court's Business Cases." *The Journal of Politics*, vol. 55 no. 2 (May, 1993) pp. 492-505.

King, Gary, Michael Tomz and Jason Wittenberg. 2000. "Making the Most of Statistical Analysis: Improving Interpretation and Presentation." *American Journal of Political Science*, vol. 44 no. 2 (April 2000). pp.347-361.

Kritzer, Herbert M. and Mark J. Richards. 2005. "The Influence of Law in the Supreme Court's Search-and-Seizure Jurisprudence." *American Politics Research*, vol. 33 no. 1 (January 2005) pp. 33-55.

McInnis, Thomas N. 2009. *The Evolution of the Fourth Amendment*. Lanham: Lexington Books.

Pacelle, Richard L. "*Mapp* to Legal Change and Policy Retreat." *Creating Constitutional Change*, ed. Gregg Ivers and Kevin T. McGuire, pp. 249-263. Charlottesville: University of Virginia Press.

Pacelle, Richard L., Brett W. Curry and Bryan W. Marshall. 2011. *Decision Making by the Modern Supreme Court*. New York: Cambridge University Press.

Segal, Jeffrey A. 1984. "Predicting Supreme Court Cases Probabilistically: The Search and Seizure Cases, 1962-1981." *American Political Science Review*, vol. 78 no. 4 (December 1984) pp. 891-900.

Segal, Jeffrey A. 1985. "Measuring Change on the Supreme Court: Examining Alternative Models." *American Journal of Political Science*, vol. 29 no. 3 (August 1985) pp. 461-479.

Segal, Jeffrey A. 1986. "Supreme Court Justices as Human Decision Makers: An Individual-Level Analysis of the Search and Seizure Cases." *The Journal of Politics*, vol. 48 no. 4 (November 1986) pp. 938-955.

Segal, Jeffrey A., Lee Epstein, Charles M. Cameron and Harold J. Spaeth. 1995. "Ideological Values and the Votes of U.S. Supreme Court Justices Revisited." *The Journal of Politics*, vol. 57 no. 3 (August 1995) pp. 812-823.

Segal, Jeffrey A. and Harold J. Spaeth. 2002. *The Supreme Court and the Attitudinal Model Re-visited*. New York: Cambridge University Press.